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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. RUDOLPH FISHER, Defendant and Appellant.	A153971 (San Francisco City and County Super. Ct. No. 15008789)

Rudolph Fisher pled guilty to misdemeanor possession of cocaine base after his motion for suppression of evidence was denied. He contends the denial of his motion was erroneous because the arresting officer lacked reasonable suspicion for a patsearch and exceeded the scope of any permissible search. We affirm.

BACKGROUND

Sergeant Scott Gaines testified that while on duty, about 2:06 a.m., on April 15, 2015, he heard a dispatch about someone using a stolen identification card at the Hotel North Beach. The two suspects were described as a black male around 45 years of age, wearing dark clothing, and a white female with black hair about 28 to 30 years old, wearing a dark jacket and black jeans. It was reported that the two left the hotel on foot, heading southbound on Kearny Street. As he drove south on Kearny toward the hotel, Gaines saw a vehicle go into an intersection on a red light and stop, about a quarter of a block away from the hotel. A white woman, 25 to 30 years old, got into the back seat of the car "pretty hurriedly" and the car continued through the red light. Gaines followed the car for a few blocks while running its license plate, then stopped it due to suspicion of

involvement in the hotel incident and for the red light violation. The stop occurred at 2:15 a.m.

Approaching the car, Gaines noticed a "small butane torch" on the back seat next to the woman (later referred to as a "large butane lighter"), as well as a "rubber band type material commonly used by medical staff and/or drug addicts to tighten onto their arm in order to produce a vein." Based on his training and experience, Gaines believed one or both of the people in the car might be using the device to ingest narcotics. He saw that the driver, appellant, matched the description of the male in the hotel call—an African-American male of the approximate age reported, wearing dark clothing. Neither appellant nor the woman was wearing a seat belt, in violation of the Vehicle Code. Asked for his driver's license, appellant first said he had left it at the hotel, then looked through his wallet and eventually found it. Gaines contacted dispatch to verify the descriptions of the people involved in the hotel incident, and to check for warrants. As of 2:19 a.m., Gaines had confirmed that appellant had a valid driver's license, registration and insurance. He had also been informed that appellant was a narcotics registrant.

Gaines did not issue a citation for the Vehicle Code violations; he detained appellant because of the hotel incident and the items on the back seat of the car. Gaines testified, "He was detained because we were trying to see if we could perform a cold show to see whether or not he was and the other person in the car were involved in the crime at the hotel. [¶] So it was a pretextual stop. There was already a traffic code violation and a subsequent traffic code violation or Vehicle Code violation of not wearing a seatbelt." Other officers had gone to the hotel, where the manager told them a white female who was accompanied by a black male had attempted to use a stolen identification card to check in, and when confronted, the two fled. The manager refused to participate in a cold show.

Meanwhile, Gaines asked appellant to step out of the car and appellant became "very belligerent," yelling and "questioning why [Gaines] was doing what [he] was doing, telling [him] that [he] couldn't do that, raising his voice. . . . Instead of an ask and answer dialogue, it was more heated." Keeping "a visual contact" on the items he had

seen on the back seat, Gaines took appellant out of the car and handcuffed him with his hands behind his back, "because of his demeanor and because of officer safety. There was two people in the vehicle. I was by myself. And to . . . do a *Terry* search on him for weapons." The officer had not seen appellant make any furtive movements or reach into his pockets prior to handcuffing him, but "the way that he was acting" aroused Gaines's suspicion. Gaines moved appellant toward the rear of the car, patsearched him, and in so doing felt something in the left front pocket of appellant's jacket. He testified, "There was a glass pipe. I could feel textile with my fingers, and based on my training and experience, I believed that to be a glass spherical pipe. [¶] It was very obvious because it had a bulb end and you could feel it through the clothing." Gaines took out the pipe, which was in a cigarette container, opened the container and saw two more glass pipes. Continuing the patsearch, Gaines felt a hard, spherical object in appellant's front right pants pocket that he believed might have been a weapon. He reached in and took out the object, which turned out to be a butane torch.

Gaines placed appellant under arrest. Officer Mohammed Azam arrived at the scene and, searching appellant incident to his arrest, found in his right jacket pocket a bag containing heroin that weighed 12.3 grams, a baggie of methamphetamine weighing 6.1 grams, a bag containing cocaine that weighed about one gram, and various pills packaged in individual baggies, including clonazepam, diazepam, oxycodone and morphine sulphate. Azam also found cash in appellant's pants pockets totaling $530. A purse in the backseat of the car, directly behind the passenger seat, contained items including lighters, a digital scale, a rental agreement for the car in appellant's name, and a storage rental invoice in appellant's name.

Appellant was charged with seven felony counts of possession of controlled substances for sale, one felony count of receiving stolen property, and one misdemeanor count of possession of unlawful drug paraphernalia, with allegations of several prior convictions and one prior prison term. He entered pleas of not guilty to all the offenses, denied the enhancement allegations, and later filed a motion to suppress evidence. The motion was heard and denied at the preliminary hearing. Count 8 (receiving stolen

property) was discharged and appellant was held to answer on the remaining eight counts, with counts 2 through 7 amended to charge possession rather than possession for sale.[1]

The district attorney filed an information charging appellant with felony possession of heroin for sale, misdemeanor possession of methamphetamine, cocaine base, morphine sulfate, clonazepam without a prescription, diazepam without a prescription, oxycodone, and unlawful drug paraphernalia, and alleging the three prior convictions and prior prison term. Appellant pled not guilty to all charges and denied the special allegations. He then filed a motion to set aside the information, primarily on the ground that the motion to suppress should have been granted; the motion was submitted to the trial court on the preliminary hearing transcript and denied. Pursuant to a negotiated disposition, appellant pled no contest to misdemeanor possession of cocaine base (Health & Saf. Code, § 11350, subd. (a)), as well as to two other violations of the same statute in two separate pending cases, and the remaining charges were dismissed on the prosecutor's motion. The court suspended imposition of sentence and placed appellant on probation for three years.

DISCUSSION

Appellant does not challenge Sergeant Gaines's initial decision to detain him in connection with the red light violation and in order to investigate his possible involvement in the hotel incident and possession of the butane torch and rubber band in his car. He further recognizes that during this traffic stop, the officer had the right to order him out of the car. (*Pennsylvania v. Mimms* (1977) 434 U.S. 106, 110–112.) Appellant's contentions are that that the officer did not have the right to frisk him for weapons because there was no basis for a reasonable belief that he was armed and dangerous, and exceeded the permissible scope of a weapons frisk by reaching into his pocket and removing the pipe after "manipulating the item to ascertain its identity."

[1] As a result of the amendments, counts 5 and 6 were reduced to misdemeanors and these two counts, along with the misdemeanor charged in count 9, were certified to superior court.

I.

In denying appellant's motion to suppress, after explaining why the initial detention was justified and stating that the officer was permitted to ask appellant to get out of the car, the magistrate continued, "[t]he only evidence in front of me is that he was belligerent and loud, I believe is what was said. He was yelling about the legality of things, and a quick patsearch is done, and the officer says he immediately recognizes the item on the defendant as being a crack pipe or a pipe that's used for smoking drugs. [¶] Combined with what he sees in the back seat of the car, the investigation continues, and I don't find that the rest of the search is unjustified at that point."[2]

Where, as here, a motion to suppress is submitted to the superior court on the preliminary hearing transcript, we review the factual findings of the judge at the preliminary hearing, deferring to them if they are supported by substantial evidence. (*People v. Hua* (2008) 158 Cal.App.4th 1027, 1033; *People v. Glaser* (1995) 11 Cal.4th 354, 362.) "We exercise our independent judgment in determining whether, on the facts presented, the search or seizure was reasonable under the Fourth Amendment." (*People v. Lenart* (2004) 32 Cal.4th 1107, 1119.)

Appellant first contends the patsearch was unlawful because the circumstances did not support a reasonable belief that he was armed and dangerous. "A limited, protective patsearch for weapons is permissible if the officer has 'reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the [same] circumstances would be warranted in the belief that his safety or that of others was in danger.' " (*In re H.H.* (2009) 174 Cal.App.4th 653, 657, quoting *Terry v. Ohio* (1968)

[2] The trial court, too, found the search justified in that the officer had a reasonable basis for the initial stop in light of the traffic violation he observed and the fact that the people in the car generally matched the description of the suspects in the hotel incident; the court also noted that the officer saw the butane lighter and rubber band in the car, appellant was belligerent and the officer was alone.

392 U.S. 1, 27 (*Terry*).) In determining whether the officer acted reasonably, "due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience. [Citation.]" (*Terry*, at p. 27.)

Here, Sergeant Gaines stopped appellant's car after observing a traffic violation—going through a red light—that appeared it might involve suspects in a crime that had just been reported. It was 2:00 a.m., and the officer was alone. Time of day, while insufficient in itself to justify reasonable suspicion, is a pertinent factor in assessing the circumstances surrounding a patsearch. (*People v. Medina* (2003) 110 Cal.App.4th 171, 177; see, *People v. Souza* (1994) 9 Cal.4th 224, 241 [detention].) As Sergeant Gaines approached the car, he saw items on the back seat that, in his experience, were connected to illegal drug use, and he soon learned that appellant was a narcotics registrant. " '[G]uns often accompany drugs.' (*United States v. Sakyi* (4th Cir. 1988) 160 F.3d 164, 169.) '[I]n connection with a lawful traffic stop of an automobile, when the officer has a reasonable suspicion that illegal drugs are in the vehicle, the officer may, in the absence of factors allaying his safety concerns, order the occupants out of the vehicle and pat them down briefly for weapons to ensure the officer's safety and the safety of others. (*Ibid.*)' " (*People v. Collier* (2008) 166 Cal.App.4th 1374, 1378 (*Collier*).) The circumstances here would reasonably heighten rather than allay concern: In the early morning hours, Gaines was confronting two people he had reason to believe were attempting to flee after committing a criminal offense (albeit not a violent one), and one of the items on the back seat of the car was "a large butane lighter that can be used as a weapon."[3] By the time the officer asked appellant to get out of the car for a patsearch, appellant had started to become "belligerent," yelling at Gaines that he could not do what

[3] Respondent relies upon the butane lighter as one of the factors justifying the patsearch. While Sergeant Gaines cited the fact that this object could be used as a weapon as one of the reasons he asked appellant to get out of the car, we do not rely upon it in analyzing the reasonableness of the decision to patsearch appellant because once he was removed from the car and handcuffed, he had no access to the object.

he was doing; the situation was "getting kind of heated." This combination of circumstances supported a reasonable belief that the officer's safety was at risk. (*People v. Avila* (1997) 58 Cal.App.4th 1069, 1074.)

Appellant attempts to defeat this conclusion by pointing to factors that were not present in the scenario, such as that the incident did not occur in a high crime area, the hotel incident did not involve violence, appellant did not make any furtive gestures or physically resist or threaten Gaines, and he was not wearing bulky clothing that might conceal a weapon. Certainly any of these factors would have given Gaines additional cause for fear. (E.g., *People v. Osborne* (2008) 175 Cal.App.4th 1052, 1060-1061 [investigation of crime of violence or crime in which suspect likely to be armed]; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1241 [suspect leaving gang house, wearing heavy coat, reached for pockets after being told to take his hands out].) But the existence or nonexistence of any particular factor is not determinative if the circumstances as a whole support the reasonableness of the officer's concern for his or her safety.

Appellant also attempts to downplay the significance of the circumstances Gaines described, but he overstates the evidence he draws on. For example, he argues that although it was 2:00 a.m., this was a "densely populated" area with "large night life," where it is not uncommon to see many people out even in the early morning hours. When asked to characterize the area as "densely populated," Gaines responded, "That area is a mixed use area. It has retail businesses and also it has residential." There was no evidence about the number of people on the street at the time of the incident. When asked if there are "a lot of people on the street" in the area at this time of day, Gaines replied, "Some nights, yes. Some nights are slower than others." Gaines was not asked for further clarification, but the incident took place midweek, 2:00 a.m. on a Wednesday morning, when busy streets would presumably be less likely than on a weekend. Similarly, attempting to minimize the behavior Gaines described, appellant asserts that the officer "clarified that what he characterized as 'belligerent,' was, in fact, appellant questioning 'why [Sergeant Gaines] was doing what [he] was doing [and] telling [him] that [he] couldn't do that." But Gaines did not testify that appellant was just "telling," he

testified that "it was more heated" than "an ask and answer dialogue," and appellant was "raising his voice" and "yelling."

Appellant analogizes his "verbal" protest" to "agitated refusal to consent," relying primarily on *United States v. Freeman* (2007) 479 F.3d 743, 749 (*Freeman*), in arguing his belligerence did not support a reasonable belief that he was armed and dangerous. *Freeman* did not involve a traffic stop, a significant distinction because "courts have long recognized that an automobile is an inherently dangerous place for the police to approach and at which to question individuals, containing as it does numerous possibilities for hidden weapons. That is why both the United States Supreme Court and the courts of this state have permitted the police to ask those they wish to question to exit automobiles." (*People v. Samples* (1996) 48 Cal.App.4th 1197, 1210–1211.)

Nor did *Freeman* consider the bearing of agitation on concern for officer safety: The issue in that case was whether officers who conducted a warrantless search of a parolee's home had "reasonable suspicion" he was violating the conditions of his parole. (*Freeman, supra,* 479 F.3d at p. 745.) *Freeman* rejected as a basis for such reasonable suspicion the fact that upon being told the officers were going to search his house, the parolee "became agitated" and walked quickly toward the bedroom, saying he needed to tell his girlfriend, who was in bed and might be undressed. (*Id.* at p. 749.) The court found Freeman's agitation easily explained by the "impending invasion of his girlfriend's privacy" by male officers at 1:00 a.m., as well as by his knowledge that the officers had no lawful right to search. (*Ibid.*) Appellant argues that his "raised-voice, verbal protests" similarly "did not support reasonable suspicion that [he] was armed and can 'easily be explained' due to the escalating police intrusiveness during an extended traffic stop." But the situations are entirely different. That agitation in the circumstances described in *Freeman* is insufficient to support a reasonable suspicion of a parole violation says nothing about the reasonableness of a police officer, making a traffic stop at 2:00 a.m. of a driver who ran a red light, is suspected of having just committed a crime, has what appears to be drug paraphernalia in the car, and is known to be a narcotics registrant,

concluding that the driver's belligerence contributes to an inference that he may be armed and dangerous.[4]

Appellant maintains that the presence on the back seat of the car of what appeared to be narcotics paraphernalia did not support a reasonable suspicion that appellant was armed because the items suggested only personal use, not drug dealing, and the connection between weapons and drugs applies only to dealers, not users. He points out that all but two of the cases respondent relies upon (*Collier, supra,* 166 Cal.App.4th 1374, and *United States v. Sakyi, supra,* 160 F.3d 164 (*Sakyi*)) involved drug sellers, and argues that the two are distinguishable and one was wrongly decided.

The three cases respondent cited involving suspected drug sellers (*United States v. Garcia* (10th Cir. 2006) 459 F.3d 1059, 1064; *United States v. $109,179 in United States Currency* (9th Cir. 2000) 228 F.3d 1080, 1086; *United States v. Anderson* (3d Cir. 1988) 859 F.2d 1171, 1177) are illustrative of a great many making the general point that drug sellers are commonly armed in order to protect themselves, their drugs and their proceeds. (See, e.g., *People v. Bland* (1995) 10 Cal.4th 991, 1005; *People v. Glaser* (1995) 11 Cal.4th 354, 368; *Ybarra v. Illinois* (1979) 444 U.S. 85, 106 (dis. opn. of

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[4] The other cases appellant cites on this point are *In re H.H., supra,* 174 Cal.App.4th at page 659, and *People v. Dickey* (1994) 21 Cal.App.4th 952, 955 (*Dickey*). The former, in which a minor who was stopped while riding a bicycle told the officer he did not give consent to search, did not involve any issue of agitation; although the court cited *Freeman,* among other cases, the principle it discussed was simply that "refusal to consent to a search does not create reasonable suspicion to detain or probable cause to search." (*In re H.H.,* at pp. 656, 659–660.) *Dickey* held that a patsearch "could not be justified based on the fact that [the defendant] (1) had no identification, (2) *exercised his Fourth Amendment right and refused to allow the deputy to search the vehicle,* (3) was nervous and sweating, (4) or because baking powder was found in a film canister." (*Dickey,* at p. 956, quoting *People v. Lawler* (1973) 9 Cal.3d 156, 161, italics added.) *Dickey* also did not involve agitation or belligerence, only nervousness and refusal to consent to a search. Refusal to consent cannot be the basis of reasonable suspicion or probable cause justifying a search because an individual cannot be penalized for this assertion of his or her constitutional rights. (*People v. Miller* (1972) 7 Cal.3d 219, 225–226; *In re H.H.*, at pp. 658–659 & fn. 3; *Dickey*, at p. 656.) Belligerence during a traffic stop is different because it suggests a potential for violence that is not inherent in a refusal to consent to search.

Rehnquist, J.) ["In the narcotics business, 'firearms are as much "tools of the trade" as are most commonly recognized articles of narcotics paraphernalia.' "].) Appellant argues that *Sakyi* was wrongly decided in that it relied upon cases recognizing the connection between drug sellers and weapons to a case that involved only evidence of drug use. Appellant takes as a given that the presumed association between drugs and weapons in the context of drug transactions is completely absent where only personal use of drugs is suspected. We do not doubt that the strength of the presumed connection is greater in the former context, but that does not mean it is completely absent in the latter.

Appellant also argues that *Sakyi* is distinguishable because the traffic stop in that case occurred in a high crime area, the subject of the patsearch was wearing loose clothing, and the subject in *Sakyi* was intentionally deceptive with the police while appellant fully cooperated in giving Gaines his driver's license. The deception in *Sakyi* was on the part of the driver of the car that was stopped, not the passenger who became the subject of the patsearch; the driver had lied to the officer about the status of his license but the case does not discuss Sakyi having done so. And while appellant was cooperative in providing the requested information to Gaines, and complied with the officer's directives, he also became belligerent. As for the present case not involving a stop in a high crime area or evidence that appellant was wearing baggy clothing, as we have said, the absence of a given factor is not determinative if the existing circumstances support a reasonable concern that a suspect may be armed and dangerous. The same is true with regard to *Collier, supra,* 166 Cal.App.4th at page 1376, which appellant distinguishes on the basis that the suspect there was taller than the officer and was wearing baggy clothing, and the officer had probable cause to search the car. The determination whether a patsearch is justified in any given case is highly fact-specific. *Collier* and *Sakyi* are both similar to the present case in that they involved traffic stops in which evidence of a connection to illegal drug use was encountered; they differ from the present case in many particulars. "The *Terry* test does not look to the individual details in its search for a reasonable belief that one's safety is in danger; rather it looks to the 'totality of the circumstances.' ([*Terry,*] *supra,* 392 U.S. [at p.] 27.)" (*People v. Avila,*

supra, 58 Cal.App.4th at p. 1074.) Here, "it seems reasonable that [the] circumstances could generate a belief in a police officer that his safety was in danger. Consequently, the patdown search was justified." (*Ibid.*)

II.

Appellant further contends that even if the patsearch was justified, Gaines exceeded the permissible scope of such a search by manipulating the object he felt in appellant's pocket to determine what it was. He maintains the lower court's finding that Gaines "immediately recognized" the object in appellant's pocket as a glass pipe is not supported by substantial evidence.

"[A] search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope." (*Terry, supra,* 392 U.S. at p. 18.) Since the "sole justification" for a *Terry* search "is the protection of the police officer and others nearby, . . . it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." (*Id.* at p. 29.) There are circumstances, however, in which police officers "may seize contraband detected during the lawful execution of a *Terry* search." (*Minnesota v. Dickerson* (1993) 508 U.S. 366, 374 (*Dickerson*).) "If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons." (*Id.* at p. 375.) "If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed." (*Id.* at p. 373.)

The character of the object must be "immediately apparent" when first touched. *(People v. Dibb* (1995) 37 Cal.App.4th 832, 836–837.) In *Dickerson,* a pat down search revealed no weapons, but the officer conducting the search felt a small lump in the defendant's pocket and "examined it with [his] fingers and it slid and it felt to be a lump of crack cocaine in cellophane." (*Dickerson, supra,* 508 U.S. at p. 369.) The officer never thought the object was a weapon, and he recognized it as crack cocaine "only after

'squeezing, sliding and otherwise manipulating the contents of the defendant's pocket'—a pocket which the officer already knew contained no weapon." *(Id.* at p. 377.) The "continued exploration" of the pocket "was unrelated to the justification for a *Terry* search and "therefore amounted to the sort of evidentiary search that *Terry* expressly refused to authorize." (*Id*. at p. 378.)

Appellant likens his case to *Dickerson.* According to his description, after squeezing the object inside appellant's jacket, Gaines concluded it was hard and smooth, about the size of a "superball gumball"; he never said he believed it was or could be used as a weapon, and at this point he had no right to "continue groping, squeezing or otherwise manipulating the object in an attempt to identify it." Appellant asserts that "[i]t was only after repeatedly groping the object and going so far as to squeeze a portion of the stem out of its cardboard cigarette container that Sergeant Gaines suspected the object was a glass pipe." Because Gaines did not have probable cause to believe the object was contraband upon first touching it, appellant maintains, his motion to suppress should have been granted.

The record does not support appellant's characterization of Gaines's testimony. Gaines testified that he "did a cursory search with [his] hand on the exterior parts of his clothing doing the four quadrants as taught in the academy." As he was "going down the quadrants," he was "groping, squeezing" in a motion like "clenching a fist," "bringing my fingers together to my thumb as I'm moving down." Gaines "noticed that I felt something in his left front pocket of his jacket. [¶] I also—there was a glass pipe. I could feel textile with my fingers, and based on my training and experience, I believed that to be a glass spherical pipe. [¶] It was very obvious because it had a bulb end and you could feel it through the clothing."

Appellant describes Gaines as having testified that he concluded the object was hard and smooth "after squeezing it," that upon initial touch he could not feel the stem of the pipe because it was tucked inside the cigarette container, but upon his continued groping, the object "came into [his] thumb and [his] fingers, and some of the item went

down," that he was "able to squeeze 'a small portion of the stem' out of the cigarette packet," and that only then did he suspect the object was a glass pipe.

Contrary to this description, the transcript reflects that Gaines was describing the pipe coming into his hand in the course of his usual movement down the jacket, not upon additional manipulation of the object after he first felt it. Asked on cross-examination what the object felt like when he first felt it, Gaines replied, "Felt like a glass bulb, and I could feel that it was around some kind of a carton, like a small carton that I believed to be like a cigarette container." It did not feel like a "round cylindrical shape" but "more of a bulb because it bulged out of the top." Defense counsel asked, "You didn't feel the stem part of the pipe?" and Gaines answered, "No, because it was stuck inside of the actual—part of it was up because it wasn't able to push all the way into the cigarette container. [¶] So it was sticking out of the top of a cardboard cigarette container." Gaines could tell the cigarette container was a cigarette container "immediately," "with most certainty." Asked how he knew the object was a pipe and not a super ball, Gaines said, "It was hard, it was smooth, and you could feel that it tapered down into a tube shape." He could feel it was hard "because of the grasping motion that I explained earlier, feeling it texturally on my fingers," and he knew it tapered to a stem because "as I was groping it, it kind of came into my thumb and my fingers, and some of the item went down as I was groping." Asked whether he squeezed "part of the stem part out of the cigarette packet," Gaines said, "No, not the entire part of it. A small portion of the stem, yes, but I didn't pull the whole stem out. I did retrieve it once I recognized." Defense counsel asked, "When you were manipulating the bulb part, did part of the stem come out of the cigarette packet?" Gaines replied, "No. It was still stuck into the carton."

Reading Gaines's testimony in full, it is clear that he was describing having immediately recognized the object in appellant's pocket as a glass pipe sticking out of a cigarette box when it came into his hand as he grasped the fabric of appellant's jacket in the course of his search for weapons. He did not describe manipulating the object to determine its identity. Rather, he said, it was "very obvious because it had a bulb end and you could feel it through the clothing."

The evidence supports the finding below that Gaines immediately recognized what the glass pipe was when he first felt it.

The motion to suppress was properly denied.

DISPOSITION

The judgment is affirmed.

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Kline, P.J.

We concur:

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Richman, J.

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Miller, J.

People v. Fisher (A153971)